

**Missouri Department of  
Natural Resources  
Administrative Policies and Procedures**

**Chapter 5 Employee Benefits**

**Family and Medical Leave Act Policy**

**Effective date**

**Revised**

**Number: 5.03**

**January 18, 2002**

**March 29, 2012**

The Missouri Department of Natural Resources provides family and medical leaves of absence according to the Family and Medical Leave Act (FMLA). FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. During any FMLA leave period the employee's health coverage under group health plans will be maintained by the department to the same extent as before FMLA leave. The department will pay the state's share of health plan premiums as if the employee were not on FMLA leave.

The FMLA provides for an unpaid status. Other examples of status are full time status or part time status. The FMLA does not provide for paid leave. Approval of FMLA status is not automatic approval of paid leave. Any leave with or without pay taken during a FMLA period must be approved according to department policy.

For serious health conditions, FMLA and Workers' Compensation can run concurrently.

**REFERENCES**

Family and Medical Leave Act (FMLA) of 1993

29 CFR 825

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Rules of the Missouri Office of Administration

1 CSR 20-5.020 <http://www.sos.mo.gov/adrules/csr/csr.asp>

*Related DNR Policies*

5.01 Leave with Pay

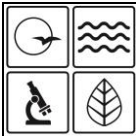
5.02 Leave without Pay

5.09 Workers' Compensation

**LINKS TO FMLA APPLICATION AND OTHER FMLA FORMS**

[Application for Family and Medical Leave](#)

[Certification of Health Care Provider for Employee's Serious Health Condition](#)



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[Certification of Health Care Provider for Family Member's Serious Health Condition](#)

[Certification of Serious Injury or Illness of Covered Service Member for Military Family Leave](#)

[Certification of Qualifying Exigency for Military Family Leave](#)

[Notice of Intention to Return from Leave](#)

**DEFINITIONS**

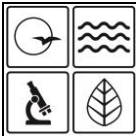
*Child:* A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age or 18 years of age or older and incapable of self-care because of physical or mental disability.

*Eligible employee:* An employee employed by the state that has one year of service which need not be continuous and who has worked at least 1,250 hours over the previous 12 months. The requirement of 1,250 hours reflects hours worked and does not include hours in any leave status, such as annual leave or sick leave, however if the employee is away on non FMLA related leave when the one year eligibility date occurs, they will become eligible for FMLA. FMLA related leave taken after that leave becomes FMLA. Separate stints of employment will be counted provided that a break in services does not exceed seven (7) years. If the break in service is due to National Guard or Reserve military service or if a written agreement exists reflecting an agreement to rehire the employee after the break in service, the break in service may exceed seven (7) years. Any records not on file will be the employees' responsibility to provide proof of employment history.

*Employment benefits:* Group life, health care coverage, disability insurance, sick leave, annual leave and retirement funds provided or available to the employee.

*Equivalent position:* A position that has the same pay, benefits and working conditions. It must involve the same or substantially similar duties and responsibilities that must entail substantially equivalent skill, effort, responsibility, and authority.

*Exigency Leave:* Leave taken for the fact that an employee's spouse, son, daughter or parent in the National Guard or Reserves; is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation.



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*Foster care:* A child placed with a family as a result of state action. This is not an informal arrangement.

*Health care provider:* One or more of the following:

- doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or
- podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law; or
- nurse practitioners, nurse-midwives and clinical social workers authorized to practice, and performing within the scope of their practice, as defined under state law; or
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or
- Any health care provider recognized by the employer or the employer's group health plan benefits manager.
- Physician assistants if performing within the scope of their practice as defined by state law (which may or may not require supervision by a doctor).

*"In loco parentis":* A person who has the rights, duties and responsibilities of a parent.

*Intermittent leave:* Leave taken in separated periods of time, rather than one continuous period of time, due to a single illness or injury. It may include leave periods from an hour to several weeks. Treatment two or more times by a health care provider must take place within a 30 day period to support intermittent leave.

*Military Caregiver:* An employee who is a spouse, son, daughter, or a parent of a covered servicemember of the Armed Forces with a serious injury or illness. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a serious injury or illness.

*Parent:* The biological parent of an employee or an individual who is or has been in *loco parentis* to the employee when the employee was a child. This term does not include parents-in-law.



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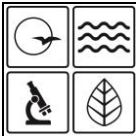
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*Serious health condition:* An illness, injury, impairment, or physical or mental condition that involves either:

- In patient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care, or;
- Continuing treatment by a health care provider, which includes:
  - (1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes:
    - a. Treatment two or more time by or under the supervision of a health care provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
      - i. One treatment by a health care provider (i.e., an in-person visit with 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or
  - (2) Any period of incapacity related to pregnancy, or for prenatal care; or
  - (3) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visit (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. (e.g., asthma, diabetes, epilepsy, etc.); or
  - (4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or,
  - (5) Any absences to receive multiple treatments for restorative surgery (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

*Spouse:* Husband or wife as defined or recognized under state law for purposes of marriage.



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*Year:* The current month and preceding eleven (11) months.

**GENERAL PROVISIONS**

**Circumstances under which FMLA leave of absence may be taken**

FMLA leave of absence may be taken for the birth or adoption of a child, for placement with the employee of a child in foster care, and to care for the newborn. A father, as well as a mother, can use FMLA status for the birth, adoption or foster care of a child. An expectant mother may request FMLA status before the birth of the child for prenatal care or if her condition makes her unable to work. FMLA status can begin before the actual placement or adoption of a child if an absence from work is required for the placement to proceed. The right to FMLA status expires twelve (12) months after the birth or placement of a child.

FMLA status may be taken to care for the employee's child, spouse or parent with a serious health condition. FMLA status does not require that the individual be the only person available to provide the care, which may include psychological care. The Health Care Provider must state the leave is medically necessary and why.

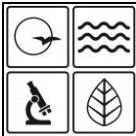
An employee may be in FMLA status for a serious health condition that makes the employee unable to perform the functions of his or her own job. For serious health conditions, FMLA and Workers' Compensation can run concurrently.

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings. Additional activities may be included if the department and the employee agree that they are a qualifying exigency event.

**Amount of FMLA leave that may be taken**

FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a year for specified family and medical reasons. Any combination of family and medical leave status may not exceed this maximum limit.

If an employee fails to return to work on the agreed return date, the department will assume that the employee has resigned.



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FMLA also included a special leave entitlement that permits eligible employees to take up to 26 weeks of unpaid leave to care for covered servicemember during a single 12-month period.

Spouses employed by the same employer are limited to a **combined** total of 26 workweeks in a “single 12-month period” if the leave is to care for a covered servicemember with a serious injury or illness, and for the birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.

**Guidelines for use of leave related to FMLA**

Use of leave with pay and leave without pay

Employees must use their accumulated compensatory time; sick leave or annual leave during FMLA status according to the relevant policy. Once an employee is on sick leave for over 5 days, or compensatory or annual leave due to conditions provided for in FMLA guidelines, the supervisor must inform HR. Eligible employees will be notified of their FMLA status by the Human Resources Program.

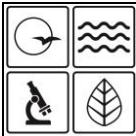
If the employee does not have sufficient sick leave, annual leave, or compensatory time accumulations to complete the twelve (12) weeks of FMLA entitlement, he or she can request leave without pay within the FMLA guidelines. If an employee in FMLA status depletes all accrued paid leave, the Human Resources Program will place that employee on an official leave of absence due to FMLA (that is leave without pay). An employee using leave without pay during FMLA status, is not entitled to accrual of leave during that leave without pay period.

An employee requesting FMLA status must explain the condition or reason to allow the employer to determine if the request qualifies as FMLA.

Intermittent FMLA Status

Under some circumstances, employees may use FMLA status intermittently in blocks of time, or by reducing their normal weekly or daily work schedule.

If FMLA status is for birth and care or placement for adoption or foster care, the use of intermittent status is subject to the employer's approval.



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FMLA status may be requested intermittently whenever medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

For intermittent status or a reduced schedule there must be a medical need as distinguished from voluntary treatments and procedures. Intermittent FMLA status must best accommodate the medical need.

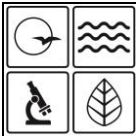
Employees requesting intermittent FMLA status must try to schedule their time off so as not to disrupt typical operations. To accommodate the request for intermittent status, the employee may be assigned temporarily to a substantially equivalent position that better accommodates the intermittent schedule. Employees must also identify the reason for the leave each time they request after the initial identification of the need for FMLA. They may do so by either referencing the condition or by indicating the absence is for FMLA.

**How to request FMLA status and obligations**

Thirty (30) days advance notice is required before FMLA status begins unless this is not practical. If not practical the employee should provide notice as soon as possible. Generally this is either the same or next business day, however the department reserves the right to ask why a 30 day notification was not practical. If the employee does not provide timely notice and is off work, the period of delay will count as a non-FMLA absence. The request form for FMLA is attached. The appropriate department leave application for leave with pay (either annual leave, sick leave or compensatory time) or leave without pay must be completed and included with the request. The department will respond to the request for FMLA with written notice detailing the specific expectations and obligations within five business days, if feasible.. The department will inform the employee if they are eligible and, if not, provide the reason why they are not eligible. If the employee is eligible, the department will notify the employee the amount of leaves being counted as FMLA (if known) and if the time off is paid time. The department will also inform the employee if a fitness for duty certification will be required upon return to work. If so, an HR representative will attach a description of the essential job functions for the use of the Health Care Provider.

The employee must provide a statement from the health care provider stating the need for the FMLA status, whether to obtain treatment for him or herself, or to care for a child, parent or spouse. The forms for this statement is contained in FMLA-3 and/or FMLA-3F. The employee must provide sufficient information to support the need for FMLA, the anticipated duration and respond to any questions that may exist as to the qualification of the request under the FMLA. Failure to respond to questions or requests for additional information may result in denial of the request for leave. This medical





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certification or any recertification must be returned within 15 days after the department requests it. If this is not possible the employee should inform their supervisor and/or Human Resources with a reasonable date that the certification will be returned. If the information is not returned within 15 days and/or an extension is not requested, the leave may be denied.

The employee must consult with the department in advance to make a reasonable effort to schedule planned treatment so as not to unduly disrupt operations. The employee must also advise the department as soon as practical when dates of leave change or become known.

Employee's requesting military family leave must be supported by the appropriate certification.

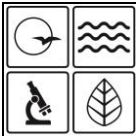
- Leave for a qualifying exigency must be supported by a copy of the covered military member's active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought.
- Leave to care for a covered servicemember with a serious injury or illness must be supported by a certification completed by an authorized health care provider **or** by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family.

The department may ask an employee for periodic reports during FMLA status regarding the employee's status and intent to return to work. If the FMLA request is for a duration of over 6 months, the department may request recertification of the request every 6 months.

If there are questions involving clarification or verification of the information presented by the Health Care Provider the department will give the employee an opportunity to clarify the information and will tell the employee specifically what information is needed. If the employee does not provide satisfactory clarification, the department Human Resources or appropriate management may contact the Health Care Provider (HCP) for verification or clarification of the information on the the form. This contact will **not** include obtaining additional medical information. If the employee fails to provide clarification and/or permission to contact the Health Care Provider, the request for FMLA may be denied.

Supervisors may not contact the Health Care Provider.





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The department reserves the right to request a 2<sup>nd</sup> or 3<sup>rd</sup> opinion to ensure that the request for FMLA is accurate. If an employee refuses to cooperate with the selected Health Care Provider by releasing any necessary and relevant medical records to that individual, the FMLA may be denied.

The employee, if ill, must provide a statement from the health care provider stating their fitness to return to work. The statement must address the illness or incapacity for which the employee was in FMLA status.. If a fitness for duty is not received within 15 days of the return to work the employee may forfeit their rights to reinstatement unless they are requesting additional FMLA.

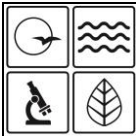
An employee on FMLA leave must provide the department at least two weeks and not less than three (3) business days notice of the date the employee intends to return to work. Through this, the employee's return to work can be properly scheduled. The form to notify the department of the intent to return to work is attached to this policy.

The department must post on the premises of each facility a notice explaining FMLA provisions and providing information on the procedures for filing complaints of violations of the Act.

The department will provide the employee with rights and responsibilities notice (see attached) each time a request for FMLA is made. The rights and responsibilities notice includes the specific expectations and obligations and explain the consequences of failing to meet these obligations. The employee's consequences for failing to meet specific expectations or obligations include:

- a. The requested leave could be counted against the employee's FMLA entitlement.
- b. Delay of taking FMLA entitlement or ending of the FMLA status until requested the employee provides notices or medical certificates.
- c. The employee may be liable for payment of health plan premiums paid by the employer during the employee's unpaid FMLA status if the employee fails to return to work after being in FMLA status.

If the department determines that the employees request for FMLA does not qualify, they will notify the employee in writing providing the reason.



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**Medical benefits provided during FMLA leave**

During any FMLA status period the employee's health coverage under group health plans will be maintained by the department to the same extent as before FMLA status. Any share of health plan premiums paid by the employee prior to FMLA status will be paid by the employee during the FMLA period.

The same conditions will be maintained if a new health plan is inaugurated.

The employee will be notified of any changes to the plan.

If the employee chooses not to retain health coverage during FMLA, he or she will be entitled to be reinstated on the same terms prior to leave upon return to work.

**Rights of employees upon returning to work from FMLA status**

The employee is entitled to return to the same or equivalent position.

Benefits will be resumed at the same level as when the status began without a physical exam or other qualifiers.

The employee will not forfeit previously accrued benefits.